Supreme Court, U. S.
FILED
SEP 6 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-388

TEX-LA ELECTRIC COOPERATIVE, INC., and
SAM RAYBURN DAM ELECTRIC COOPERATIVE, INC.,
Petitioners,

v.

CECIL D. ANDRUS, Individually, and as Secretary of the Interior, ET AL., *Respondents.*

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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September 6, 1978

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1977

Civil 1219-71

No. 77-1445

TEX-LA ELECTRIC COOPERATIVE, INC., *Appellant*

v.

CECIL D. ANDRUS, INDIVIDUALLY AND AS SECRETARY OF THE INTERIOR, ET AL

77-1446

SAM RAYBURN DAM ELECTRIC COOPERATIVE, INC., *Appellant*

v.

CECIL D. ANDRUS, INDIVIDUALLY AND AS SECRETARY OF THE INTERIOR, ET AL

Civil 1342-71

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Before: DANAHER, Senior Circuit Judge, and TAMM and WILKEY, Circuit Judges

(FILED MAY 15, 1978)

Judgment

These causes came on to be heard on the record on appeal from the United States District Court for the District of Columbia and were argued by counsel. On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court, that the judgment of the District Court appealed from herein is hereby affirmed, for the reasons set forth in the attached memorandum.

Per Curiam
For the Court

/s/ GEORGE A. FISHER
George A. Fisher
Clerk

Memorandum

Appellants primarily challenge the procedures employed by the Secretary and the Commission in determining the rate increases in question. We find that the rates were promulgated in a manner fully consistent with applicable legal requirements. Appellants confuse the instant rate increases with rate applications made by a private utility under the Federal Power Act. Unlike rate applications made by a private utility under the Federal Power Act, the instant proceedings went forward under Section 5 of the Flood Control Act of 1944. The standards have been prescribed by the Congress. There [*sic*] are cost recovery rate increases, and the Secretary of the Interior was duty-bound to dispose of power and energy so as to encourage the most widespread use "at the lowest possible rates to consumers consistent with sound business principles." Rate schedules so evolved become effective only upon "confirmation and approval by the Federal Power Commission."

Moreover, Congress clearly contemplated that the public interest requires that the Government recover the cost of producing and transmitting electric energy, an important factor in the determination of which is to include the "amortization of the capital investment allocated to power over a reasonable period of years."

Before us are proceedings involving cost recovery rate increases, the procedural requirements respecting which, under Section 5 consist of notice and the opportunity to submit written comments.

We are not shown that the appellees in any manner have failed to execute the duties devolving upon them. The requirements were met in this case.

No more was required; no formal hearings were necessary; appellees were not required to respond to every comment submitted by appellants. *Associated Electric Power Cooperative* v. *Morton*, 507 F.2d 1167 (D.C. Cir.

1974). *See Vermont Yankee Nuclear Corp.* v. *NRDA*, 46 L.W. 4301 (1978). Where, as here, all interested parties, including appellants—who were the only contractual customers for the power of each dam—were fully notified of the proposed rate increases and of their right to submit written comments thereon, the rates set are not invalid because this information was not also published in the *Federal Register*. Appellants were not adversely affected by lack of formal publication; *see Hogg* v. *United States*, 428 F.2d 274 (6th Cir. 1970), and they had actnal and timely notice of the information, 5 U.S.C. § 522(a)(1)(C). Moreover, the appellants' opportunity to comment on the rate increases fully satisfied due process requirements. *Associated Electric Power Cooperative* v. *Morton, supra. See United States* v. *Florida East Coast Railway Co.*, 410 U.S. 224 (1973). The mere presence of technical issues in and of itself is insufficient to support a requirement for evidentiary hearings. *See O'Donnell* v. *Shaffer*, 491 F.2d 59 (D.C. Cir. 1974).

We further conclude that the District Court was correct in granting appellees' motion for summary judgment. No genuine *factual* dispute existed. Appellants sought to defeat appellees' motion for summary judgment by attacking appellees' R & R method on two grounds: First, they disputed appellees' use of the R & R method, seeking to substitute the "cost of service" method. However, use of the R & R method was reasonable and fully consistent with § 5 of the Act, and appellant's preference for an alternative method did not raise a "factual" dispute. Second, appellants disputed the cost figures upon which the rate increases were premised. However, no *specific* factual dispute was advanced; rather appellants contested the accuracy of the cost figures and called for their verification. We believe that neither the Secretary nor the Commisison was obliged to make a second assessment of each and every cost figure derived by the Corp of Engineers in the R & R studies.

APPENDIX B

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

SEPTEMBER TERM, 1977

[Filed June 8, 1978]

No. 77-1445

Civil Action #1219-71

TEX-LA ELECTRIC COOPERATIVE, INC., *Appellant*

v.

CECIL D. ANDRUS, Individually and as
Secretary of the Interior, et al

No. 77-1446

Civil Action #1342-71

SAM RAYBURN DAM ELECTRIC COOPERATIVE, INC., *Appellant*

v.

CECIL D. ANDRUS, Individually and as
Secretary of the Interior, et al

BEFORE: Danaher, Senior Circuit Judge; Tamm and Wilkey, Circuit Judges

Order

Upon consideration of the petition for rehearing filed by appellant in the above referenced cases, it is

ORDERED by the Court that appellant's aforesaid petition is denied.

Per Curiam
For the Court:

/s/ GEORGE A. FISHER
George A. Fisher
Clerk

APPENDIX C

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1219-71

TEX-LA ELECTRIC COOPERATIVE, INC., *Plaintiffs*,

v.

ROGERS C. B. MORTON, et al., *Defendants*

SAM RAYBURN DAM ELECTRIC COOPERATIVE, INC., *Plaintiff*,

v.

ROGERS C. B. MORTON, et al., *Defendants*

Civil Action No. 1342-71

(FILED APRIL 1, 1977)

Order

These consolidated cases are now before the Court on cross-motions by the parties for summary judgment. The court has carefully examined the voluminous record in these cases and has concluded that the rates set by defendants comport in all respects with the requirements of Section 5 of the Flood Control Act of 1944, 16 U.S.C. § 825s. It is entirely appropriate and indeed mandated by Congress that, in setting these rates, the government should seek to recoup its investment as well as the costs of producing and transmitting electric energy. And the Court finds that the method by which the government has chosen to recoup its investment and costs is in no sense arbitrary and capricious, but rather is perfectly reasonable. Moreover, inasmuch as plaintiffs received actual notice of the proposed rate increases and an opportunity to submit written comments on them, the Court finds that more than ample process has been accorded plaintiffs in these cases.

See Associated Electric Cooperative, Inc. v. *Morton*, 507 F.2d 1167 (D.C. Cir. 1974).

Accordingly, plaintiffs' motions for summary judgment must be denied and defendants' motions granted in both cases. Judgment must be awarded to the defendants on their counterclaims and plaintiffs are instructed to remit to the government all outstanding charges, as indicated in the counterclaims.

These cases are hereby dismissed.

So ORDERED.

/s/ WILLIAM B. BRYANT
CHIEF JUDGE

Dated: March 31, 1977

APPENDIX D

APPENDIX D

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;
Lawrence J. O'Connor, Jr.,
John A. Carver, Jr., and
Albert B. Brooke, Jr.

Docket No. E-7201

UNITED STATES DEPARTMENT OF THE INTERIOR
SOUTHWESTERN POWER ADMINISTRATION
SAM RAYBURN DAM PROJECT

(FILED MARCH 5, 1971)

Order Confirming and Approving Rates and Charges

(Issued March 5, 1971)

The Secretary of the Interior, acting on behalf of Southwestern Power Administration (SWPA) and pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890), filed a request with the Federal Power Commission on June 3, 1970, as amended on December 17, 1970, in Docket No. E-7201 for confirmation and approval of new and higher rates and charges for the sale of all electric power and energy generated at the Sam Rayburn Dam Project (Project) to the Sam Rayburn Dam Electric Cooperative, Inc. (Cooperative) for the period beginning January 1, 1971 and ending July 1, 1976.

The Project is a hydroelectric development located on the Angelina River, Neches River Basin, in the State of Texas, and operated by the U.S. Army Corps of Engineers. There are two 26,000 kw generating units now in commercial operation at the Project, which is isolated from SWPA's main integrated electric system. The transmission facilities for receiving and delivering the electric power and energy produced at the Project are provided by Gulf

States Utilities Company (Gulf States) in accordance with certain contractual arrangements hereinafter described.

The Cooperative's members are municipally-owned and cooperatively-owned electric systems operating in eastern Texas and southwestern Louisiana. Under contractual arrangements between (1) SWPA and the Cooperative and (2) the Cooperative and Gulf States, the total output of the Project is sold by SWPA to the Cooperative and then resold by the Cooperative to Gulf States, which credits the account of the Cooperative each month by an amount equal to the total compensation paid by the Cooperative to SWPA. In accordance with the Cooperative-Gulf States contract, amounts of electric energy equal in the aggregate to the average annual electric energy generated at the Project are supplied and delivered each year by Gulf States to four municipal members of the Cooperative, namely, the Cities of Jasper, Liberty, and Livingston, Texas, and the Town of Vinton, Louisiana. In addition, Gulf States, under its contract with the Cooperative, supplies and delivers the total electric power requirements of two cooperative members of the Cooperative, namely, Sam Houston Electric Cooperative and Jasper-Newton Electric Cooperative.[1]

The proposed rates and charges are designed to supersede the rates and charges approved by Commission order issued April 30, 1965 (33 FPC 930) for the period terminating June 30, 1970, which approval was subsequently extended through December 31, 1970 by Commission orders issued June 29 and October 2, 1970, all in the above docket.

SWPA originally requested that its annual charge for the sale of the entire output of the Project to the Cooperative be increased from $950,004 to $1,050,150. Subsequently,

[1] Gulf States' rate schedules for wholesale electric service to the Cooperative and its members are on file with the Commission pursuant to the requirements of Section 205 of the Federal Power Act.

however, SWPA amended its request and now seeks an annual charge of $1,030,000.

In support of its proposed rate increase, SWPA submitted to the Commission an Average Rate and Repayment Study, including Summary Tables. That data shows some of the assumptions and estimates relied upon by SWPA in 1965 in seeking approval of the annual charge of $950,004 for the sale of the Project output must be reconsidered or revised in the light of subsequent experience and developments. It was assumed, for instance, that the second generating unit at the Project would be in commercial operation by July 1, 1965, although this did not actually occur until about three years later. Furthermore, the capital investment allocated to electric power in the Project originally amounted to $22,695,000, whereas such investment has now grown by $153,000 to $22,848,000. Similarly, the annual operating expenses for the production of electric power at the Project were initially estimated to be $108,000, but are now estimated to be $149,800, an increase of $41,800. In addition, the portion of SWPA's annual administrative and general expenses allocated to the Project has been increased from $23,000 to an average of more than $47,000. On the other hand, the estimated annual cost of replacements required during the 50-year repayment period has been reduced from $28,000 to about $18,000.

SWPA's proposed rates and charges for the sale of the Project output have been reviewed in the light of the requirements of Section 5 of the Flood Control Act of 1944 that "Rate schedules shall be drawn having regard to the recovery * * * of the cost of producing and transmitting * * * electric energy, including the amortization of the capital investment * * * over a reasonable period of years." That review shows that the annual charge of $1,030,000 for which SWPA now seeks Commission approval is the minimum amount necessary to obtain sufficient revenues to (1) pay all operating expenses related to electric power

production at the Project and (2) amortize the investment in electric power facilities at the Project within 50 years after the commencement of commercial operation of the Project's second generator.

The Cooperative, Gulf States, and the Corps of Engineers were furnished copies of SWPA's request for a rate increase, together with supporting data, and were invited to submit comments and suggestions with respect thereto. The Cooperative, by letter filed with the Commission on August 10, 1970, contended that the rate increase sought by SWPA was not needed to meet the payout requirements under the Flood Control Act of 1944 and requested that the Commission extend its approval of SWPA's current rates and charges "until such time as SPA [SWPA], the Corps of Engineers, and the * * * Cooperative have determined, through appropriate studies and negotiations, whether * * * any rate increase is necessary, and if so, whether * * * this power and energy can be sold to us or anyone else for a higher cost than it is bringing today." In support of its contention and request, the Cooperative stated, among other things, that (1) the repayment period of 50 years for the Project should start not earlier than fiscal year 1970 instead of fiscal year 1966 as shown in SWPA's computations since it was not until fiscal year 1969 that commercial operation of the second generating unit commenced and the full reservoir condition and normal reservoir operating levels occurred;[2] (2) the general administrative costs of SWPA are allocated to the Project on an unrealistic basis and the allocated portion of such costs is excessive; and (3) remote control operation of the Project should be investigated to determine whether the operation and maintenance expenses of the Corps of Engineers could thereby be reduced.

[2] SWPA's Average Rate and Repayment Study, Section I, filed with the Commission on June 3, 1970, shows that the Project's second generator commenced commercial operation in fiscal year 1968.

Gulf States, by letter filed with the Commission on September 14, 1970, explained that it is concerned with SWPA's proposed rate increase for sales to the Cooperative since Gulf States is contractually obligated to pay the Cooperative for electric energy at the same rate paid by the Cooperative to SWPA. Gulf States questioned the accuracy or appropriateness of the basis upon which various allocations were made by SWPA to the Project operating expenses or capital investment in setting the proposed rates and charges for electric power. It was contended in particular by Gulf States that SWPA should allocate a greater portion of the Project capital investment to recreation and flood control and a lesser portion of such investment to electric power than is presently the case. In this connection, we note that the Project costs used in SWPA's repayment study are from an allocation of costs made by the Corps of Engineers.

No comments or suggestions concerning SWPA's rate increase request were received by the Commission from the Corps of Engineers.

The Cooperative and Gulf States were also furnished copies of SWPA's December 17, 1970 amendment to its rate request whereby the proposed annual increase was reduced from approximately $100,000 to approximately $80,000. No comments or suggestions upon that amendment were received by the Commission from Gulf States. The Cooperative, however, by letter filed with the Commission on December 30, 1970, requested, in substance, that it (the Cooperative) be given until March 31, 1971 to study and comment upon SWPA's amendment. SWPA filed its objections to the Cooperative's request on January 13, 1971. The Commission, by letter dated January 28, 1971, informed the Cooperative that any comments or suggestions which it wished to submit for the Commission's consideration in connection with SWPA's amended rate filing should be submitted not later than February 12, 1971. The

Cooperative on February 10, 1971 filed a telegram with the Commission seeking again until March 31, 1971 for submittal of comments. In support of its request of February 10, 1971 for additional time, the Cooperative indicated that it did not have a paid full-time staff and that its comments must be prepared by persons having other duties, thereby necessitating more time for study.

We appreciate the problems cited by the Cooperative in reviewing and commenting upon SWPA's rate filing, but we cannot ignore the responsibility of SWPA to avoid delays in complying with the Congressional directions respecting the revenue needs of the Project. We have pointed out that our study of SWPA's rate request, as amended, disclosed that the proposed annual charge of $1,030,000 is the minimum amount necessary to meet the statutory payout requirements. Furthermore, SWPA's reduction of its proposed rate increase reflects an accommodation, in principal, with two of the main objections raised by the Cooperative to that rate increase (in its comments heretofore submitted to the Commission or to SWPA) by (1) postponing the commencement of the repayment period for the Project until after both of its generating units were in commercial operation, and (2) amortizing during the scheduled repayment period a portion only of the cost of any replacement item for the electric facilities of the Project where the service life of that item extends beyond the expiration of such period. Under the circumstances set forth above, we believe that we would not be justified in putting off action on SWPA's proposed rate increase and, therefore, we cannot allow the Cooperative more time for preparation and submittal of additional comments in this matter. In giving long-term approval to new rates and charges for SWPA's sales to the Cooperative, however, we do so for a period of approximately five years in accordance with our established practice rather than for the longer period sought by SWPA.

THE COMMISSION FINDS:

The proposed rates and charges of SWPA for the sale of all electric power and energy generated at the Sam Rayburn Dam Project to the Cooperative in the amount of $1,030,000 per year ($85,833.34 per month), all as described above, for the period beginning with the date of issuance of this order and ending not later than December 31, 1975, will not be inconsistent with the provisions of the Flood Control Act of 1944.

THE COMMISSION ORDERS:

The proposed rates and charges of SWPA for the sale of all electric power and energy generated at the Sam Rayburn Dam Project to the Cooperative in the amount of $1,030,000 per year ($85,833.34 per month), all as described above, are hereby confirmed and approved for the period beginning with the date of issuance of this order and ending not later than December 31, 1975.

By the Commission.
(SEAL)

Kenneth F. Plumb,
Acting Secretary.

APPENDIX E

APPENDIX E

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;
Lawrence J. O'Connor, Jr.,
John A. Carver, Jr.,
and Albert B. Brooke, Jr.

Docket No. E-6943

UNITED STATES DEPARTMENT OF THE INTERIOR
SOUTHWESTERN POWER ADMINISTRATION
NARROWS DAM PROJECT

(FILED JANUARY 22, 1971)

Order Confirming and Approving Rates and Charges

(Issued January 22, 1971)

The Secretary of the Interior, acting on behalf of Southwestern Power Administration (SWPA), filed a request with the Federal Power Commission on May 25, 1970, as amended on December 11, 1970, in Docket No. E-6943, pursuant to Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890), for confirmation and approval of new and higher rates and charges for the sale of all electric power and energy generated at the Narrows Dam Project (Project) to Tex-La Electric Cooperative, Inc. (Tex-La) for the period beginning January 1, 1971, and ending June 30, 1975.

The Project, located on the Little Missouri River in southwestern Arkansas in the service area of Southwestern Electric Power Company (SWEPCO), is isolated from SWPA's main integrated electric system and SWEPCO operates the only transmission line interconnecting with the Project. There are three 8,500 kw generating units now in operation at the Project.

Tex-La is an organization composed of cooperatively-owned and municipally-owned electric systems operating

in eastern Texas and Louisiana. Tex-La does not own or operate an electric transmission system. Under contractual arrangements between Tex-La and SWEPCO, all electric power and energy generated at the Project and purchased by Tex-La from SWPA is delivered to SWEPCO. In return for such deliveries and additional purchases by Tex-La from SWEPCO, SWEPCO supplies the total electric power requirements of Tex-La's cooperative and municipal members referred to above.

The proposed rates and charges are designed to supersede the rates and charges approved by the Commission on August 26, 1965 (34 FPC 608) for the period terminating June 30, 1970, which approval was subsequently extended through December 31, 1970, by Commission orders issued June 26 and October 2, 1970, all in the above docket.

SWPA originally requested that its annual charge for the sale of the entire output of the Project to Tex-La be increased from $367,992 to $468,000. Subsequently, however, SWPA amended its request and now seeks an annual charge of $465,000.

SWPA represents that the currently approved annual rate of approximately $368,000 for the sale of the Project output was computed on the basis of amortizing the investment in electric power at the Project during an 83 year period from the date of installation of the third generating unit or 100 years from the date on which the Project commenced commercial operation. In order to secure sufficient revenues to amortize the above-mentioned investment within 50 years from the date of installation of the third unit, SWPA filed the pending request for approval of an increase in the annual rate to Tex-La.

In support of its request as originally filed for an additional $100,000 annually in the rate for the sale of the output of the Project, SWPA submitted to the Commission a rate and repayment study. It shows that an annual charge of approximately $468,000 would be required to produce

sufficient revenues to amortize the investment in the electric power facilities at the Project during fiscal year 2020, which is 50 years after the third generating unit at the Project commenced commercial operation.

Tex-La and SWEPCO were furnished copies of SWPA's request for a rate increase and were invited to submit comments and suggestions with respect thereto. Tex-La filed with the Commission a letter dated June 19, 1970 wherein Tex-La stated its objections to the proposed rates, asked that the Commission hold an evidentiary hearing thereon, and asked further that approval of such rates not be granted until Tex-La was given an opportunity to be heard. No comments or suggestions were received by the Commission from SWEPCO.

In addition, Tex-La and SWEPCO were furnished copies of SWPA's amendment to its request whereby the proposed annual rate increase was reduced from approximately $100,000 to approximately $97,000. Thereafter Tex-La, by telegram filed on its behalf with the Commission on December 22, 1970, requested that the Commission extend for an additional 60 days its approval of SWPA's current rates and charges for the sale of the Project output to Tex-La. In seeking that extension, Tex-La referred to the negotiations among SWPA, Tex-La and SWEPCO concerning new contractual arrangements for the marketing of the Project output, including new rate and delivery terms and conditions, and stated that such negotiations have reached the point where only one issue remains unresolved, namely, the disposition of the energy in SWPA's electric system which is not contractually obligated. Tex-La represented that settlement of that issue is possible in the event that the requested extension is granted. SWPA, by telegram filed with the Commission on December 29, 1970, asked that the Commission deny Tex-La's request for an extension of approval of the current rates. In opposing such extension, SWPA contended that it was sought for the purpose of

delaying Commission action on the proposed rate increase rather than for the purpose of continuing negotiations for new contractual arrangements, which SWPA represents as being "at an impasse with no present prospect of agreement in the immediate future."

It is clear from the foregoing that the 83 year payout period for the Project under the currently approved rates of SWPA does not comply with the requirements of the Flood Control Act of 1944, Section 5, that rate schedules "shall be drawn having regard to the *** amortization of the capital investment allocated to power over a *reasonable* period of years" (emphasis supplied). For that reason, SWPA seeks approval of new and higher rates which may result in the payout being achieved within 50 years after the Project's newest generating unit became commercially operable. We have often determined that 50 years is a "reasonable period" within the meaning of the statute. Furthermore, our approval at this time of the proposed rate increase should not prejudice continuance of negotiations by SWPA, Tex-La and SWEPCO for the purpose of revising their existing contractual arrangements to reflect changes in the operations of their respective electric systems. We do not believe that we would be justified in delaying or otherwise impeding SWPA's attempt to amortize the investment of the United States in the Project in accordance with the statutory payout requirements, particularly where, as here, such delay is not necessary to accomplish the actions cited in support of a delay. In the event that further negotiations among SWPA, Tex-La and SWEPCO result in agreement upon new electric service arrangements, thereby making it appropriate to change those rates of SWPA which we are approving by this order, we will, of course, consider any applications for approval of such rate changes. Under these circumstances we also believe that we would not be justified in delaying the effectiveness of SWPA's proposed rates pending an evi-

dentiary hearing on the objections to those rates raised by Tex-La.

THE COMMISSION FINDS:

The proposed rates and charges of SWPA for the sale of all electric power and energy generated at the Narrows Dam Project to Tex-La in the amount of $465,000 per year ($38,750 per month), all as described above, for the period beginning with the date of issuance of this order and ending not later than June 30, 1975, will not be inconsistent with the provisions of the Flood Control Act of 1944.

THE COMMISSION ORDERS:

The proposed rates and charges of SWPA for the sale of all electric power and energy generated at the Narrows Dam Project to Tex-La in the amount of $465,000 per year ($38,750 per month), all as described above, are hereby confirmed and approved for the period beginning with the date of issuance of this order and ending not later than June 30, 1975.

By the Commission.
(SEAL)

Gordon M. Grant,
Secretary.

APPENDIX F

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APPENDIX G

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APPENDIX H

APPENDIX H

STATUTORY PROVISIONS INVOLVED

Flood Control Act of 1944, 58 Stat. 890, as amended, § 5:

Section 5, 16 U.S.C. § 825s:

> "Electric power and energy generated at reservoir projects under the control of the Department of the Army and in the opinion of the Secretary of the Army not required in the operation of such projects shall be delivered to the Secretary of the Interior, who shall transmit and dispose of such power and energy in such manner as to **[1]** encourage the most widespread use thereof **[2]** at the lowest possible rates to consumers consistent with sound business principles, the rate schedules to become effective upon confirmation and approval by the Federal Power Commission. Rate schedules shall be drawn having regard to **[3]** the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years. Preference in the sale of such power and energy shall be given to public bodies and cooperatives. The Secretary of the Interior is authorized, from funds to be appropriated by the Congress, to construct or acquire, by purchase or other agreement, only such transmission lines and related facilities as may be necessary in order to make the power and energy generated at said projects available in wholesale quantities for sale on fair and reasonable terms and conditions to facilities owned by the Federal Government, public bodies, cooperatives, and privately owned companies. All moneys received from such sale shall be deposited in the Treasury of the United State as miscellaneous receipts."

Administrative Procedure Act of 1946, 60 Stat. 237, as revised 80 Stat. 381, 5 U.S.C. § 551 et seq.:

Section 3, 5 U.S.C. § 552(a)(1):

"(a) Each agency shall make available to the public information as follows:

"(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public——

"(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

"(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

"(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

"(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

"(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the

Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register."

Section 4, 5 U.S.C. § 553:

"(a) This section applies, according to the provisions thereof, except to the extent that there is involved——

"(1) a military or foreign affairs function of the United States; or

"(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

"(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include——

"(1) a statement of the time, place, and nature of public rule making proceedings;

"(2) reference to the legal authority under which the rule is proposed; and

"(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply——

"(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

"(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

"(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

"(d) The required publication on service of a substantive rule shall be made not less than 30 days before its effective date, except——

"(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

"(2) interpretative rules and statements of policy; or

"(3) as otherwise provided by the agency for good cause found and published with the rule.

"(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."

Section 10(e), 5 U.S.C. § 706:

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall——

"(1) compel agency action unlawfully withheld or unreasonably delayed; and

"(2) hold unlawful and set aside agency action, findings, and conclusions found to be——

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(B) contrary to constitutional right, power, privilege or immunity;

"(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

"(D) without observance of procedure required by law;

"(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

"(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."